

No. 71219-5-I

**IN THE COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

YURI PROSTOV, an individual,

Appellant,

v.

WASHINGTON STATE DEPARTMENT OF LICENSING,
a Washington governmental agency,

Respondent.

REPLY BRIEF OF APPELLANT

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I. INTRODUCTION

The Department of Licensing (the “DOL”) disregards the plain language of the statute; heavily relies upon faulty information specifically ruled inadmissible by the trial court or not part of the trial record; and misrepresents photo evidence to try and sustain its 2009 claim that Mr. Prostov committed misdemeanor fraud under RCW 46.20.0921(1)(e). Although the legislature specifically required the DOL to prove that a licensee “has committed” criminal misdemeanor fraud, the DOL claims the plain language of the statute should be disregarded and a lower preponderance standard applied to show the commission of this crime. The DOL cites to no competent authority and no legislative history to support its misguided position. The only way the DOL can prove that a licensee has committed criminal misdemeanor fraud is to prove that the licensee has committed the crime under the normal standard or review applicable to the criminal statute. Had the Legislature intended a different result, it would have said so. *Evergreen Freedom Found. v. Wash. Educ. Ass’n*, 140 Wn.2d 615, 631, 999 P.2d 602 (2000). Equally unpersuasive are the DOL’s other arguments as discussed further below.

II. COUNTERSTATEMENT OF FACTS

A. Inadmissible Evidence or Not Part of Trial Record. The DOL has inappropriately included testimony and information in its statement of the case that the trial court had either ruled to be inadmissible or it was not part of the trial record. VRP 28:13-25, 29:1, 43:13-25, & 44:1-19 (explicit trial court rulings). Specifically, over half of the DOL’s statement of the case is devoted to inadmissible testimony from its employee investigator, Ms. Bullock, and facial recognition software information that was never made part of the trial record. Resp’t Br. at pp. 3-4 (in its entirety) & and p. 5, ¶ 1. In fact, the DOL had conceded to the trial court that it was not seeking to introduce anything from its facial recognition software. VRP 27:22-25. The DOL also refers to an agency hearing that was also never made part of the trial record. Resp’t Br. at p.4, ¶ 3. Only after providing this information, the DOL provides a few short corrective statements about the trial court’s actual treatment of the material—lacking any notion of clarity and not disclosing the incompetent nature of the information. *See* Resp’t Br. at p.3, n.3 (information about facial recognition software provided as “background information”) and Resp’t Br. at p. 5, ¶ 1 (“[t]he court ruled that Ms. Bullock could not testify....”).¹

¹ The DOL’s post-comment statements are like “locking the proverbial barn door after the horse is stolen.” *Fed. Old Line Life Ins. Co. (Mut.) v. Sullivan*, 33 Wn.2d 358, 397,

Written Application Required. Under the DOL's policy manual, a prospective licensee must begin the original written application process anew whenever his or her license has been expired for more than five years. *See* Appx. A, Section 6.7.I.D (relevant portion of DOL's policy manual). Here, GP's license was issued on June 25, 2001 and had expired on January 10, 2004. Ex. N. When GP obtained his license on January 28, 2009, his license had been expired for more than five years requiring him to begin the original written application process anew. *See* Appx. A, Section 6.7.I.D. But, the DOL never offered any application.

In addition, the DOL maintains an application for licensure even for renewals. *See* Appx. A, Section 6.7.I.H-K. When obtaining a renewal in person, the DOL witness testified that the licensing service representative creates a record of the application on the DOL's computer system consistent with its policy manual. VRP 68:11-25 & 69:1-18.

Evidence. Mr. Prostov and GP are identical twins who are commonly mistaken for each other by people unfamiliar with them. VRP 81, 117. They have striking similarities in size, weight, and stature. VRP 117. Only three photos were admitted into evidence by the DOL and

206 P.2d 311, 331 (1949). The DOL then used this incompetent information to try and support its arguments. *See, e.g.,* Resp't Br. at 43.

considered by the trial court to prove the DOL's 2009 claim—Exhibits R/S, T/U and V.² CP 17-18. Mr. Prostov testified that each of the photos and signatures identified as him were him and that each of the photos and signatures identified as GP were GP. VRP 85-89. The DOL never offered any testimony or other evidence to identify the individuals in the photos or to even testify about the two identical twins. In fact, the DOL conceded that it did not even attempt to contact GP even though it repeatedly referred to him as a “victim” throughout trial. VRP 54.

III. ARGUMENT

A. **The DOL's Argument that a Lower Standard Applies to Its Claims of Criminal Misdemeanor Fraud is Without Merit.**

The only way the DOL can prove a licensee “has committed” criminal misdemeanor fraud is to use the beyond a reasonable doubt standard of review the Legislature intended for the commission of the criminal act. It is a condition precedent to imposing the legislatively prescribed penalties under RCW 46.20.291. The objective of statutory interpretation is to execute the intent of the legislature, which must be primarily determined from the language of the statute itself. *Evergreen Freedom Found. v. Wash. Educ. Ass'n*, 140 Wn.2d 615, 630, 999 P.2d 602

² Exhibits R and S are the same photo. Exhibits T and U are the same photo.

The DOL's argument that it can disregard the plain statutory language simply because its claims of criminal conduct arise in the context of a *de novo* judicial review proceeding is untenable. Resp't Br. at 28. The DOL fails to comprehend the seriousness of its allegations. The statute explicitly requires proof that Mr. Prostov has committed criminal misdemeanor fraud, not under the lesser standard of proof the DOL wants to apply, but under the beyond a reasonable doubt standard the Legislature intended to apply for proving the commission of this criminal offense.

Even assuming *arguendo* that the statute was deemed ambiguous,⁴ it is well established that criminal statutes must be construed in the manner in which an ordinary citizen would understand their terms. *State v. Johnson*, 179 Wn.2d 534, 563, 315 P.3d 1090 (2014). An ordinary citizen understands the term "misdemeanor" to concern a criminal act. Accord *Black's Law Dictionary* 1014 (7th Ed. 1999). An ordinary citizen also understands the phrase "has committed [criminal fraud]" to mean "[t]o perpetrate a crime." *Webster's Third New International Dictionary*

⁴ If the DOL is arguing that term "committed" is ambiguous, it is wrong. Resp't Br. at 13. But, even if the term was ambiguous, the DOL takes the word "committed" in isolation without consideration of the prohibited practices to which it refers, namely, the commission of criminal misdemeanor fraud. Under the principle of *noscitur a sociis*, "a single word in a statute should not be read in isolation." *State v. Roggenkamp*, 153 Wn.2d 614, 623, 106 P.3d 196 (2005). Instead, "the meaning of words may be indicated or controlled by those with which they are associated." *Id.* (internal quotation marks omitted) (quoting *State v. Jackson*, 137 Wn.2d 712, 729, 976 P.2d 1229 (1999)).

457 (1986); accord *Black's Law Dictionary* 266 (7th Ed. 1999). Thus, any ordinary citizen reading the language of the statute would understand that the DOL has to prove that the licensee perpetrated the crime.

None of the cases cited by the DOL involve a condition precedent requiring the DOL to prove that a licensee has committed a criminal act. The DOL heavily relies upon *Fritts v. Dep't of Motor Vehicles*, 6 Wn. App. 233, 240, 492, P.2d 558 (1971) for the proposition that a licensure revocation proceeding cannot require the DOL to prove the commission of a criminal act. Resp't Br. at 11. This is without merit. In *Fritts*, the DOL had revoked a license based upon the licensee refusal to submit to a breathalyzer test at the time of his arrest—it was a *per se* violation of Washington's informed consent laws. *Id.* at 234. The Court held that the revocation proceeding based upon a *per se* violation of the implied consent laws was not a criminal proceeding. *Id.* at 240. But, the implied consent statute did not require that the DOL to prove the licensee had committed a criminal act; rather, the legislature made licensure revocation automatic for a violation of the informed consent laws. *Id.* at 235. In fact, the *Fritts* Court stated, “[i]t is not necessary, in this case, for the department to have established that the appellant actually committed the misdemeanor for which he was arrested.” *Fritts*, 6 Wn. App. at 238.

The DOL's reliance upon *Ingram v. Dep't Of Licensing*, 162 Wn.2d 514, 518, 173 P.3d 259 (2007) fails for the same reason.⁵ *Ingram* also involved a *per se* violation of Washington's informed consent laws (failed breathalyzer) that mandated license revocation. *Id.* at 518-19. As in *Fritts*, the informed consent statute did not require the DOL to prove that that the licensee had committed a crime. *Id.* at 522.

The DOL's reliance upon *California ex rel. Cooper v. Mitchell Bros. Santa Ana Theater*, 454 U.S. 90, 93, 102 S. Ct. 172, 70 L.Ed. 2d 262 (1981) is equally misplaced. *This case supports Mr. Prostop.* In *California ex rel. Cooper*, the Supreme Court held that a State can require the beyond a reasonable doubt standard for proving the civil money damage claim of obscenity. *Id.* at 93-94. The Court recognized that a State's decision to use a higher standard of review for the civil claim of obscenity was a matter of State law. *Id.* Contrary to the DOL's claim, however, the Supreme Court in *California ex rel. Cooper* was never asked to address the question of whether the federal Constitution requires proof beyond a reasonable doubt for a statute that makes the commission of a

⁵ The Court stated, "[t]his court will not add to or subtract from the clear language of a statute, rule, or regulation, even if it believes the Legislature...intended something else but did not adequately express it unless the addition or subtraction of language is imperatively required to make the statute rational. *Ingram*, 162 Wn.2d at 526.

crime a condition precedent to the imposition of a penalty, such as the motor vehicle license revocation here. *See id.*

Next, the DOL relies upon *State v. Von Thiele*, 47 Wn. App. 558, 561, 736 P.2d 297 (1987) for the inaccurate proposition that the beyond a reasonable standard does not apply because RCW 46.20.291 is “inherently remedial.” In *Von Thiele*, the person *had already been convicted* of illegal hunting before the Superior Court even applied restitution. *Id.* at 561 (emphasis added). The statute required “a person *convicted of* illegal hunting to reimburse the State for each animal illegally killed.” *Id.* (emphasis added). The statutory condition precedent (“convicted of illegal hunting”) had already occurred prior to the trial court’s order requiring restitution. *Id.* Here, in contrast, the legislature has unequivocally required the DOL to first prove that the licensee has committed criminal misdemeanor fraud before it can apply the statutory penalty. Thus, unlike the hunter in *Von Thiele*, the DOL here has not satisfied the condition precedent for the imposition of the licensure penalty—i.e. that Mr. Prostov has committed criminal misdemeanor fraud.

Moreover, although the DOL attempts to downplay the seriousness of its criminal fraud allegation, Washington courts have long recognized the important constitutional due process notions affected by the wrongful denial of driving privileges. *Dep’t of Motor Vehicles v. Andersen*, 84

Wn.2d 334, 339-40, 525 P.2d 739 (1974). The importance is magnified when the DOL makes allegations of criminal fraud. In fact, the revocation of a license based upon a determination of a criminal act is arguably more penal than the imposition of a fine. Not only does the a licensure revocation lead to the loss of an important property interest long recognized by Washington courts, *id.* at 339, but it also carries a heavy stigma associated with the alleged criminal act. *See In re Winship*, 397 U.S. 358, 365, 90 S. Ct. 1068, 1073, 25 L.Ed.2d 368 (1970) (rejecting civil label-of convenience placed on a penal statute).

Finally, *Quinn v. Chery Lane Auto Plaza, Inc.*, 153 Wn. App. 710, 722, 225 P.3d 266 (2009) is not analogous to the case at bar. Resp't Br. at 15. *Quinn* did not even involve a license revocation proceeding; rather, it concerned a private right of action under RCW 46.70.027 brought by a dissatisfied truck purchaser. *Id.* at 713. The DOL was not involved. *Id.* Although the preponderance standard may be appropriate for a private money damages action under RCW 46.70.027, that statute has no application to the circumstances here.⁶

⁶ Likewise unpersuasive is the DOL's comparison to licensure actions under the Vehicle Dealership and Manufacturers Act ("VDMA"), Ch. 46.70 RCW. Licensure actions under the VDMA generally apply to vehicle dealers and manufacturers, not individuals subject to being deprived of a recognized important property interest. *See* RCW 46.70.101. Nevertheless, if the VDMA requires proof of the commission of a criminal act before the DOL may impose a licensing penalty, then, as here, the DOL

B. It is Not Uncommon in a Civil Proceedings to Import a Higher Standard of Review Applicable to the Claim Being Alleged.

As discussed in Section III.A above, the DOL's claim that the beyond a reasonable doubt standard is never applied in the context of a civil proceeding is highly inaccurate. Resp't Br. at 11 (citing *California ex rel. Cooper*, 454 U.S. at 93). In fact, the *California ex rel. Cooper* case cited by the DOL is just one such example where it has been held that a State can incorporate the beyond a reasonable doubt standard for proving the civil claim of obscenity. *Id.* at 93-94. There are also other examples where civil cases import higher standards of review from other matters. For example, in a legal malpractice case, a client must show that the outcome of the underlying litigation would have been more favorable, but for the attorney's negligence, which typically requires a trial within a trial. *Kommavongsa v. Haskell*, 149 Wn.2d 288, 300, 67 P.3d 1068 (2003). In other words, if the underlying litigation from which the malpractice claim arose includes a civil claim of fraud, then the clear, cogent and convincing evidence standard applicable to that civil fraud claim is imported into the malpractice case for proving the causation element. *See id.*

would be required to prove the commission of the criminal act under the beyond a reasonable doubt standard that the legislature intended for proving the commission of the criminal offense. The DOL's request to interpret the plain meaning of the statute differently should be rejected. If the DOL has an issue with the plain language of the statute, its remedy is through the legislative branch, not through judicial *fiat*.

Furthermore, in a number of agency cases, courts have found that due process requires an elevated standard of review. For example, in medical disciplinary cases, Washington's Supreme Court has held:

The interest of the medical practitioner in a professional disciplinary proceeding is obviously much greater than that which would be implicated by the mistaken rendition of a mere money judgment against him. It is much more than the loss of a specific job. *It involves the professional's substantial interest to practice within his profession, his reputation, his livelihood, and his financial and emotional future.* That the public has an interest in the competent provision of health care services lends even greater importance to the assurance against erroneous deprivation which a higher standard would promote, as ultimately the public is dependent upon the provision of such services, not their elimination. An inadequate standard of proof increases the risk of erroneous deprivation and, therefore, requires recognition, as so many other courts have, that *the constitutional minimum standard of proof in a professional disciplinary proceeding for a medical doctor must be something more than a mere preponderance.*

Nguyen v. State, Dep't of Health Med. Quality Assurance Comm'n, 144 Wn.2d 516, 534, 29 P.3d 689 (2001) (emphasis added).

This holding in *Nguyen* is similar to the *Andersen*, 84 Wn.2d at 339-40, where the Court identified the important property interest of a motor vehicle operator's license that implicates constitutional due process. For the same reasons, if the beyond a reasonable doubt standard is not applied to the DOL's allegation of criminal misconduct, then, at a minimum, the clear, cogent and convincing evidence standard should be

applied. As in *Nguyen*, the wrongful deprivation may impact the licensee's profession, reputation, livelihood, and/or financial and emotional future.

C. The DOL's Nebulous Distinction Between Its Allegation of Criminal Fraud and Civil Fraud is Without Merit.

The DOL spends 18 pages of its brief to try and make a unclear distinction between an allegation of criminal misdemeanor fraud that gives rise to license revocation and a claim of civil fraud where Washington courts have long applied the clear, cogent and convincing evidence standard of review. Resp't Br. at 15-33. Nowhere in its 18 page brief does the DOL ever explain why the *Mathews v. Eldridge* balancing factors for its allegation of criminal statutory fraud weigh any less in comparison to the claim of civil fraud that has long received a heightened standard of review in Washington courts. Put simply, the DOL's allegation of criminal misdemeanor fraud that leads to license revocation weighs much more heavily in favor of a heightened standard of review.

The DOL falsely contends that the a heightened standard of review has only been required in cases where the private interest involved a fundamental right or personal liberty—such as avoiding confinement. Resp't Br. at 18. If the DOL was correct, then a heightened standard of review would never be required for civil fraud. But, as discussed

previously, Washington courts have long required the clear, cogent and convincing evidence standard of review to establish claims of fraudulent representation. *Forsyth v. Davis*, 152 Wash. 595, 598, 278 P. 676 (1929); *see also Nguyen*, 144 Wn.2d at 534.

As stated in Appellant's opening brief, in determining the amount of process required, the court considers the following three-pronged test set forth by the U.S. Supreme Court in *Mathews v. Eldridge*: "(1) the private interest affected; (2) the risk of erroneous deprivation by the procedures used; and (3) the government interest to be protected in light of the fiscal and administrative burdens imposed by additional procedural safeguards." *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)). All three prongs weight in favor of a heightened standard of review.

First, the private interest affected weighs heavily in favor of a heightened standard of review. The DOL fails to mention the controlling precedent of *Dep't of Motor Vehicles v. Andersen*, which has already identified the important due process property interest at stake in a license revocation proceeding. 84 Wn.2d at 339-40 ("we have held that such administrative action was essentially of a judicial or quasi-judicial nature, and that the subject matter, i.e., the possession of a motor vehicle operator's license, was of sufficient dignity and value to bring into play

due process notions, which deserved and entitled the licensee to a ‘full’ de novo hearing in the superior court.”). The *Andersen* Court recognized the great importance of the motor vehicle license to Washington citizens.

Second, the risk of an erroneous deprivation is substantial as shown under the facts here. As explained *infra*, the DOL offered only three photos of the identical twins taken years apart under a variety of photographic conditions without any testimonial support through lay or expert witnesses. The DOL is engaged in a large volume business and, to keep up with the demand, it has employed a number of crude computer techniques like its facial recognition software that the trial court found to inadmissible. In fact, the DOL’s witness testified that the computerized technique commonly returns results for identical siblings like Mr. Prostov and GP. As the DOL seeks to streamline its processes, the risk of an erroneous deprivation of the important property right increases. In addition, as explained previously, when the DOL has alleged criminal misdemeanor fraud, the ordinary unassuming individual is likely to lean toward believing the accuser of the crime, especially when the allegation comes from a State governmental entity. To be both clear and convincing, the truth of the facts asserted must be highly probable, which is a reasonable standard when fraud (criminal or civil) is alleged.

Finally, there is no doubt that the DOL has an interest in protecting the identity of its citizens and those using the roads consent to reasonable regulation. Reasonable regulation, however, is not undermined by requiring a showing of clear, cogent and convincing evidence when the DOL has alleged that a citizen has committed a criminal act. If the DOL believes there are facts supporting such a serious allegation, the evidence supporting it should be of the nature making it highly probable that the person committed the alleged criminal fraudulent act.

In sum, the *Mathews v. Eldridge* factors under the circumstances here warrant a heightened standard of review. The seriousness of the criminal fraud claims here leading to the deprivation of a motor vehicle license in a revocation proceeding cannot be materially distinguished from civil fraud, which courts in Washington have long held to apply the heightened standard of review.

D. The DOL Failed Establish any Application for Licensure, a Required Element of Its Claim.

The DOL's failure to admit any application for licensure is fatal to its claim. Resp't Br. 38 ("the fact the Department did not provide a hard copy application as evidence is of no consequence."). The plain terms of the statute requires that the DOL prove a form of fraud in an application for licensure. RCW 46.20.0921(1)(e) ("[t]o use a false or fictitious name

in any application for a driver's license....") (emphasis added). Contrary to the DOL's contention, the consequence for failing to establish a necessary element of a crime is dismissal of the charge. *State v. Conklin*, 79 Wn.2d 805, 807, 489 P.2d 1130, 1131 (1971).

Here, as confirmed by the DOL's own policy manual, GP was required to start his written application process anew for issuance of the January 28, 2009 license because it had been expired for more than five years. Ex. N. When an individual's license has been expired for a period of more than five years, he or she must begin the written licensure application process anew. *See* Appx. A, Section 6.7.I.D (relevant portion of DOL's policy manual).⁷ GP's license was issued on June 25, 2001 and expired on January 10, 2004. Ex. N. Five years after this expiration was January 10, 2009. Therefore, GP was required to begin the original written application process anew because he did not seek to obtain a new license until January 28, 2009—more than five years after his last license had expired. The DOL, however, failed to offer any application.

In addition, even assuming *arguendo* that GP's license had not been expired for a period of more than five years requiring the written

⁷ In a public disclosure request, the DOL initially stated that the authority for this was RCW 46.20.181, which was the basis for this authority in Appellant's opening brief. The DOL, however, later stated that the requirement was embodied in its policy manual, which it then provided a copy of, which is attached hereto as Appendix A.

application process to begin anew and that the January 28, 2009 licensure was a renewal, the DOL still maintains an application for licensure even for renewals.⁸ *See* Appx. A, Section 6.7.I.H-K (relevant portion of the DOL policy manual). In the case of an in-person renewal, the DOL witness testified that the service representative creates a record of the renewal application on the DOL's computer system, VRP 68:11-25 & 69:1-18, which is consistent with the DOL's policy manual. *See* Appx. A, Section 6.7.I.H-K. The service representative must record in the DOL's computer system the applicant's answers to a series of questions designed to ensure the person's identity. *Id.* Thus, even for a renewal obtained in person, the DOL maintains a written application for licensure.

In sum, the DOL never sought to admit any application for the licensure on January 28, 2009, the date of the criminal claim—neither an original written application for licensure nor the record of an application for a renewal—pursuant to its policy manual.

E. The 2009 Claim is Not Supported by Substantial Evidence.

As discussed in Section II above, only three photos were admitted into evidence and considered by the trial court for the DOL's 2009 claim—Exhibits R/S, T/U and V. CP 17-18. The DOL offered no other

⁸ The DOL had falsely contended that it kept no record of any application for licensure on a renewal. Resp't Br. at 5-6 & 36-38.

evidence to support its claim of criminal fraud.⁹ The uncontroverted testimony from Mr. Prostov confirmed that each of the photos and signatures identified as him were him and that each of the photos and signatures identified as GP were GP. VRP 85-89. The DOL never offered testimony or any other evidence to identify the individuals in the photos or even to testify about the two twins. In fact, the DOL did not even attempt to contact GP or any of his relatives. VRP 54.

The DOL states, “Yuri also testified, *admitting* that Exhibits K, R, and S were true and correct photos of himself and that Exhibits L and V were true and correct photos of his brother, Geirman.” Resp’t Br. at 6 (emphasis added). It is unclear what the DOL means by this so-called admission because Mr. Prostov accurately testified that the photos in Exhibits K, M, O/P, Q & R/S contained photos and signatures of himself and that the photos in Exhibits L, N, T/U & V accurately showed photos and signatures of GP. VRP 85-89. Mr. Prostov was the only witness who testified as to the identity of the persons in the photos and his identifications are uncontroverted. The DOL never called any witnesses, lay or expert, to provide identity testimony and, in fact, conceded that it

⁹ The DOL witness admitted that its local licensing offices keep video footage, but none was ever offered at trial. VRP 78. The DOL witness also testified that although its licensing employees are specifically trained to identify identity fraud, no fraud was ever detected here. *Id.* The DOL local licensing office personnel were not called as witnesses

had never even tried to contact GP, the person who it claimed to be “victim” repeatedly throughout trial.¹⁰ VRP 54.

In sum, the photos of the two identical twin brothers taken years apart under a variety of photographic conditions without anything more does not provide the quantum of evidence necessary to persuade a fair-minded, rational person that Mr. Prostov has committed criminal fraud even under a preponderance standard. *Helman v. Sacred Heart Hospital*, 62 Wn.2d 136, 147, 381 P.2d 605 (1963). At most, this is a he said she said case. At trial, however, the only identification testimony came from Mr. Prostov himself and it was uncontroverted. VRP 85-89.

F. The *Andersen* Court Established a Right to a Jury Trial.

Under *Andersen*, 84 Wn2d at 340, a licensee unequivocally has a right to a jury trial in a *de novo* review proceeding. The DOL, however, argues that it is not making claims of criminal conduct and, therefore, the civil rules should apply. Resp’t Br. at 39. It is wrong. The DOL has claimed that Mr. Prostov has committed criminal misdemeanor fraud and, in so doing, incorporates the procedures applicable to charges of criminal misconduct. Mr. Prostov never waived his right to a jury trial for the

even though they had the closest contact with the licensees.

¹⁰ The trial court committed reversible error by using the fact that GP was not called as a witness as a factor weighing against Mr. Prostov even though the DOL undisputedly had the burden of proof in the *de novo* proceeding. VRP 172-73.

alleged criminal claims. CrR 6.1(a) (requiring waivers to be in writing); *State v. Wicke*, 91 Wn.2d 638, 642, 591 P.2d 452 (1979) (same).

The scope of the criminal rules “govern the procedure...*in all criminal proceedings* and supersede all procedural statutes and rules that may be in conflict....” CrR 1.1 (emphasis added); *see also* CrR 1.2 (“[t]hese rules are intended to provide for the just determination of every criminal proceeding.”). Washington’s Constitution also preserves this right to a jury trial. WASH. CONST. Art. I, Section 21. Although the DOL seeks to recast its claims as something other than allegations of criminal misconduct, this is refuted by the findings below. VRP 159; CP 18-19.

G. The *Constanich* Court held That “Judicial Review” Under the EAJA is Ambiguous and Applied the Legislative Intent.

The DOL’s argument that the phrase “judicial review” under the Equal Access to Justice Act (the “EAJA”) is ambiguous for some purposes but not for others is without merit and defies logic. Resp’t Br. at 41. The DOL concedes that under *Constanich v. Washington State Dep’t of Soc. & Health Servs.*, Washington’s Supreme Court held that the phrase “judicial review” under the EAJA was ambiguous and, therefore, it needed to be interpreted to further the legislative intent of the remedial statute.¹¹ 164

¹¹ The DOL’s claim of rewriting a “decade of EAJA cases” is self-refuting. Resp’t Br. at 41. The DOL has only cited one other case from 2006. *Id.*

Wn.2d 925, 929-30, 194 P.3d 988, 991 (2008). However, the DOL then illogically argues that the phrase “judicial review” under the EAJA is both ambiguous and unambiguous, contrary to *Constanich*. Resp’t Br. at 41.

The *Constanich* case was the first chance the Court had ever been asked to determine the meaning of the phrase “judicial review” under the EAJA. *Constanich*, 164 Wn.2d at 929 (“it is the language of subsection (1) and the definition of “judicial review” that is the focal point of our inquiry in this case.”). The *Constanich* Court held that chapter 34.05 RCW does not define the phrase “judicial review,” and “because the [EAJA] statute is ambiguous [on what constitutes judicial review], [the court] must discern and implement the legislature’s intent.”¹² *Constanich*, 164 Wn.2d at 929-30. The *Constanich* Court then found and applied the legislative intent for the EAJA: “[i]n 1995, the legislature enacted the EAJA, Chapter 4.84 RCW, to ensure citizens a better opportunity to defend themselves from

¹² The issue in *Constanich* was whether monetary caps under the EAJA applied collectively to all levels of judicial review as DSHS argued, or to each level of review. *Constanich*, 164 Wn.2d at 930. The *Constanich* Court held that the phrase “judicial review is susceptible to different meanings” and, therefore, ambiguous. *Constanich*, 164 Wn.2d at 930. The Court found that nowhere in the APA did it define or state what type of judicial review would be covered under the EAJA. *Id.* The DOL’s conclusion that The EAJA does not apply because judicial review for licensing matters is excluded from the procedural provisions of the APA is a *non sequitur*. The DOL’s circular reasoning rests on a misguided presumption that the phrase “judicial review” under the APA is unambiguous, an argument that was rejected by the *Constanich* Court. In fact, the APA expressly recognizes that other means of judicial review exist, including *de novo* judicial review of agency actions like the licensing action here. RCW 34.05.510. Here, the Court should follow *Constanich* and apply the clear Legislative intent.

inappropriate state agency actions.” *Costanich*, 164 Wn.2d at 929. The Court should not disregard the controlling precedent as the DOL contends. The phrase “judicial review” is either ambiguous or unambiguous under the APA and that question was answered by the *Costanich* Court and cannot be disregarded as the DOL contends.

Next, the DOL’s claim that it was “substantially justified” in bringing either the 2001 or 2009 claim is also without merit. All it offered was the photos. No reasonable person would have made claims of criminal misdemeanor fraud based upon a few unsubstantiated photos taken many years apart under materially different photographic conditions without anything more. Mr. Prostov was undeniably vindicated by the trial court of the DOL’s 2001 claim of criminal fraud, which is the relief he sought. He vigorously defended himself against the wrongful allegation to clear his name and to remove the stigma associated with the criminal claim. Mr. Prostov specifically testified that he worked in the financial industry where reputation is everything. VRP 83.

Finally, the DOL’s argument that that the 2001 misdemeanor fraud claim and the 2009 misdemeanor fraud claim are somehow one in the same and that Mr. Prostov did not prevail on the 2001 claim is also without merit. Resp’t Br. at 7, ¶ 2. This argument is refuted by the trial court’s findings, which unequivocally state “[t]he Department *also alleged*

that Mr. Prostov obtained a renewal license on behalf of his brother, Geirman Prostov, on June 25, 2011 [sic]. On that matter, the Court finds for Petitioner Yuri Prostov as the evidence did not establish the Department's claim." CP 17 (emphasis added). Similarly, the trial court concluded, "the Department has not met its burden of establishing its allegation that petitioner Yuri Prostov committed a violation of RCW 46.20.0921(1)(e) on June 25, 2001." CP 19. The trial court's conclusion that the DOL had not sustained its burden of establishing its 2001 claim of misdemeanor fraud demonstrates Mr. Prostov prevailed.

IV. CONCLUSION

For the foregoing reasons, the trial court's decision should be reversed and reasonable attorneys' fees and costs assessed.

Dated this 16th day of September, 2014.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the United States of America and the State of Washington that on the date specified below, I filed and served the foregoing as follows:

Division I Court of Appeals 600 University St. One Union Square Seattle, WA 98101-1176 Phone: 206-464-7750	Messenger Service <input type="checkbox"/> First Class U.S. Mail <input checked="" type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile <input type="checkbox"/>
Jeremy Gelms Assistant Attorney General Licensing & Admin. Law Division 800 Fifth Avenue, Suite 200 Seattle, WA 98104 Phone: (206) 587-4211 JeremyG1@atg.wa.gov	Messenger Service <input type="checkbox"/> First Class U.S. Mail <input checked="" type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile <input type="checkbox"/>

DATED: September 16, 2014, at Kirkland, Washington



Karen H. Suggs

09-16-14 09:11:10
KIRKLAND, WA 98033

APPENDIX A

6.3 Original License

- I. The original license procedure is used to determine driver qualifications and establish an initial driving record in the database. The minimum identification to apply for a first Washington License is documentation establishing name and date of birth. (See Section *5.2 & 5.9*)
- II. Use the original license procedures, including collecting the application fees, in the following cases
 - A. When a customer applies for a Washington driver's license for the first time.
 - B. When a customer has had a Washington license and has obtained a license from any other state, territory or possession. (Refer to IV. A)
 - C. When a customer presents a DOL letter or the "A" screen shows "TST" on the status bar, original tests are required. The "TST" comment alerts the LSR that the original driver license application requires the customer to take a knowledge and drive test. Customers, other than those under 18, must be eligible to begin the application for a driver license (See Section V below.) **Example:** A customer with an ORL (see Section 6.16) may not test while in possession of an ORL; they must be eligible before any testing can begin.
 - D. When a customer is required to provide written and drive test scores to another state for the purpose of complying with an out-of-state clearance.
 - E. When a customer is applying for a license following surrender of a driver's license or Intermediate License (See Section 6.4.).

Note: Use the re-examination process to reinstate a customer's driving privilege when the surrender is due to a medical or visual condition. (See Section 9)
 - F. When a customer has a Washington record expired more than five years.
- III. Testing suspended out-of-state drivers.

A customer applying for an original Washington license may be suspended in another state. In order to clear their record, the customer may be required to complete testing requirements in Washington. Use the following procedure when a customer indicates a requirement to complete testing to clear an out-of-state suspension:

 - A. Call the Out-of-State desk, (360) 902-3950, to check what action is necessary.
 - B. The Out-of-State desk will check the requirements for reinstatement in the other state and authorize testing when it is appropriate.
 - C. Collect the application fee from the customer and conduct the examinations.
 - D. Once the customer has successfully completed both the knowledge and drive tests, notify the Out-of-State desk at (360-902-3950) or one-line message (DOL

OLM HQ OUT-OF-STATE). Include the customer's license number and the state where the customer is suspended. The Out-of-State desk will fax the information to the state. It is that state's responsibility to complete the action necessary to clear the driver's record.

- E. When the customer returns to the licensing office and they indicate their out-of-state suspension has been released, check the PDPS system to ensure no hit exists or the hit has been cleared. If the record is clear process the application as usual. (See Section 6.6)

IV. Original license testing.

- A. Ask the customer and visually verify if there are any endorsements on their out-of-state license.

- 1. Motorcycle and CDL endorsements (except the hazardous material endorsement) are transferable. An appropriate surrender form must be completed if an endorsement is surrendered.
 - a. This does not change the requirement for a current Threat Assessment and the requirement to pass the hazardous material endorsement examination for the CDL.
 - b. If the CDL or motorcycle endorsement is not on the out-of-state license, and the Washington record shows the motorcycle or CDL endorsement, then the endorsement was surrendered to the current state of record.
 - 1) If the CDL or Motorcycle endorsement was surrendered for over one year, testing will be required. (See Section 6.27)

- B. Waive the knowledge and drive test when:

- 1. An original license customer presents a valid driver license from another state, District of Columbia, a US territory or possession or a valid US Department of State driver license. Current US territories or possessions include:
 - a. American Samoa
 - b. Guam
 - c. Puerto Rico
 - d. Virgin Islands of the U.S.
 - e. Northern Marianas Islands
- 2. The customer presents a clearance letter or Abstract of Driving Record (ADR) issued within the last 30 days. This must contain the customer's name, DOB, the out-of-state license number and a valid expiration date of the license.
- 3. When an out of state driver is under the age of eighteen they must meet the issuance requirements (Section 6.3, V. A.3) and Traffic Safety Education (See Section 6.3, V. C) and they will be subject to the Intermediate License requirements. (See Section 6.3, V. 4)

4. Customers who have obtained a license from another state must show their out of state license or a clearance letter (or ADR) to have tests waived.

C. Washington may enter into an agreement with other countries that meet or exceed our licensing standards (RCW 46.20.125). When an agreement has been signed, customers from that country will be allowed to transfer their driver license without requiring them to take the PDL knowledge and drive tests and required tests for motorcycle endorsements. Currently there are agreements with Germany and British Columbia.

1. ***LSRs will waive the knowledge and drive test for customers who present a valid license from Germany. This does not include motorcycle or CDL endorsements. The German license will not be invalidated when the Washington driver license is issued.***
2. ***LSRs will waive the knowledge and drive tests for customers who present a valid license from British Columbia. This will include any required tests for motorcycle endorsements, but not CDL endorsements.***
 - a. ***If the customer has lost their British Columbia driver license, LSRs will accept written confirmation of their license from British Columbia (correspondence will reference Insurance Corporation of British Columbia - ICBC) in lieu of the actual driver license.***
 - b. ***LSRs will invalidate the customer's British Columbia license by punching a hole in center of the photo before returning to the customer.***

D. The written and drive test is required when:

1. The customer is unable to present a valid out-of-state driver's license, ADR or a clearance letter from the previous state verifying the license's validity. This includes previous Washington's drivers returning from another state. This includes endorsements.

Example:

The customer had a previous Washington driver license expiring in 2010. They moved to Kansas, applied for and received a Kansas driver license. They returned to Washington, stating they lost their Kansas license.

This driver is required to take a written and drive test or provide an ADR or clearance letter from Kansas. Kansas is their state of record until a Washington driver license is issued.

This is an Original application, processed as a (L1) or (C1).

- a. The statutory requirement is to present either the valid license or a clearance letter from his or her previous state. (RCW 46.20.120 and WAC 308-104-047)

- b. Customer requests for Department of Licensing to verify the status of out-of-state licenses will be denied.
 - 2. If a customer previously stated they do not have a license from another state and later provides their valid license or a clearance letter showing that a valid license is held:
 - a. On the Update a License Application (DFS 131) screen update the “Prev/ID/lic St”, and “Prev #” entry fields on the case record in the DFS 132.
 - b. In the Remarks area document that an out-of-state clearance letter or license was presented.
 - c. If the customer has started testing they must successfully complete that part of the test. For example, if a customer disqualifies on a driving test, they will have to pass a driving test before the license can be issued.
 - 3. The customer’s license has expired.
 - 4. The customer is required to complete a reexamination. Reexamination reports are required when transferring restrictions from an out of state license (See Section 9.1).
 - a. Collect the application fee for the original license.
 - b. There are no additional application fees if the out-of-state licensed customer disqualifies on the examinations and completes testing within 90 days.
 - 5. If the customer has disqualified on the drive test a Washington license cannot be issued until they qualify on the drive test.
- V. Testing customers less than 18 years of age. (RCW 46.20.075)
- A. The Intermediate License (IL)
- 1. All customers under age 18 are required to obtain an IL. The Legislature created the IL to help improve highway safety by progressively developing and improving the skills of younger drivers in the safest possible environment thereby reducing the number of vehicle collisions and violations. There are several requirements to obtain the IL.
 - a. Be at least fifteen years, ten months of age.
 - b. Have possessed a valid Instruction Permit for four months or longer.
 - 1) This time can include an out-of-state or out-of-country Instruction Permit or license. The LSR will check the permit/license issue date. Agriculture permits do not apply to this time requirement.

- 2) The instruction permit eligibility is shown on the top of the issue screen (DFS160). The procedures outlined above do not change the way drive test rodeos are scheduled or conducted.
- 3) The Instruction Permit does not need to be valid at the time of license application.
- c. Not have been adjudicated for an offense involving the use of alcohol or drugs.
- d. Have had no traffic violations within the six months prior to their eligibility date.
- e. Present an approved traffic safety education certificate before scheduling the drive test. The knowledge test can be taken before the approved traffic safety education certificate is presented.

Note: No license will be issued until the customer meets the intermediate license eligibility requirements below.

- 2. To **determine eligibility** for an Intermediate License for any person under the age of 18, follow these steps:

- a. Select “A” Update A License on the DFS main menu.
- b. Verify that the customer has held an Instruction Permit for at least four months and continue the application process.

If the customer has not held an Instruction Permit for at least four months inform the customer of their eligibility date and discontinue the application process.

- c. If there are any **discrepancies regarding eligibility**, the LSR will contact Record Response, (360) 902-3988 or inform the customer to contact Customer Service at (360) 902-3900 to inquire eligibility information.
 - 1) If the header on the DFS screen indicates “**IL Not Elig**” status.
 Note: it is not necessary to contact Record Updates (360) 902-3988 when a customer is applying for an instruction permit. “**IL Not Elig**” does not disqualify a customer for an Instruction Permit.
 - 2) If the header indicates “**not elig-viol within 6 months**” status.
 - 3) If the header indicates “**not elig- alco/drug incident**” status.
- d. If the original Instruction Permit was “interrupted” by a revocation and they don’t have six months of valid permit time, the customer must get a duplicate or renewal permit to equal out the six months of valid permit time.

- 3. To be issued the intermediate **license**, the customer must:

- a. Be at least sixteen years of age.
- b. Have possessed an Instruction Permit for at least six months.
- c. Have presented an approved Traffic Safety Education certificate.
- d. Have the parent or guardian sign parental permission and certify completion of at least 50 hours of supervised driving, including ten (10) hours of nighttime driving and permission to obtain the license.
 - 1) The 50 hours of supervised driving, including ten (10) hours of nighttime is a requirement of the RCW 46.20.075.
 - 2) LSR will examine logs presented by customer and tell the customer to keep the log with their Traffic Safety Education certificate in case it is needed in the future.
 - 3) If a log is not presented the LSR will not say anything and LSRs will not dismiss customers who present their training logs or tell them that the log is not needed.
- e. Have qualified on the knowledge and drive test.
- f. Have no host error regarding ineligibility on the record or has not been adjudicated for an offense involving the use of alcohol or drugs (call Record Updates at (360) 902 3988 to verify diversion on MIP)
- g. Have not been found to have committed or been convicted of a traffic violation within the last six months.
- h. Have disclosed the Social Security Number or signed the Social Security Number declaration.

Note: The LSR will ask the customer and parent whether or not the customer has had any traffic violations issued recently or if any are pending. If so the customer is not eligible for an Intermediate License. Traffic infractions and violations that are pending are not reported to the Department but once posted to their driving record the customer's license will be canceled.

When the application is processed, the driving record is searched for any committed/convicted traffic violations within the last six months. If violations are either disclosed or found the customer is not eligible, and the customer is not able to meet these standards within the 90-days, the customer must re-apply and pay all required fees.

- 4. When the original IL is issued an Intermediate License Brochure and IL magnet will be given to the customer. In order to protect the PCs the magnets will be kept at the camera station, but away from the hard drive. The LSR taking the customer's picture will write, on the IL Magnet with an indelible ink pen or marker,
 - One year from the date of the original intermediate license issuance, or
 - If the customer is 17, use their 18th birthday.

Once a customer has obtained an IL they will be subject to certain restrictions that include the following:

- a. For the first six months after issuance of an IL the holder of the IL may not have any passengers in the vehicle under the age of 20, except for members of the holder's immediate family.
- b. For the next six months the holder may not have more than three passengers in the car under the age of 20 except for members of the holder's immediate family.
- c. The holder of an IL may not operate a vehicle between the hours of 1 AM and 5 AM except when a parent, guardian, or a licensed driver who is at least twenty-five years of age accompanies the driver who possesses an IL.
 - 1) The only exception to the above restrictions is if it is necessary for the driver to operate a motor vehicle for agricultural purposes, such as transporting farm workers products or farming supplies under the direction of a farmer. In this instance, the IL restrictions will not apply. (RCW 46.20.075 (6-7))
- d. The restrictions on the IL will remain in effect until the driver turns eighteen years of age. However, twelve months after the issuance of an IL, the restrictions will be removed if the holder has not been involved in an automobile accident, regardless of fault, and has not committed or been convicted of traffic offenses or violations (RCW 46.61) of the license restrictions.
- e. The customer reapplying after license surrender or cancellation must be processed as an original license applicant (L1). This includes license surrenders when customers receive an out of state license.
 - 1) Process a new Record of Application
 - 2) The application and licensing fee must be repaid.
 - 3) No examinations are required if the surrender/cancellation is less than one year or if the customer has a current out of state license.
 - 4) Customers less than 18 years of age.
 - a) The TSE certificate is not required since there is a Washington driver's license record on file.
 - b) The parent's signature and identification are required
 - c) All restrictions and requirements of the Intermediate Licensing law start over from latest date of issue.

5. The holder of an IL is also subject to licensing sanctions if they commit or are convicted of traffic offenses or violations of the license restrictions. These include: RCW 46.20.267
 - a. For a **first** traffic offense that is a Rules of the Road violation (RCW 46.61), or for a first violation of the restrictions on an IL, a warning letter will be sent to the driver's parent or guardian and the IL restrictions will be imposed again.
 - b. For a **second** such offense, DOL will suspend the IL for six months or until the driver reaches age eighteen, whichever occurs first. A notice of the suspension will be sent to the driver and a copy of the notice will be sent to the driver's parent or guardian.
 - c. For a **third** such offense, DOL will suspend the IL until the driver reaches age eighteen. A notice of the suspension will be sent to the driver and a copy of the notice will be sent to the driver's parent or guardian.

B. Parent/Guardian Permission.

1. Parent/guardian permission must be obtained and documented by the parent signing the Record of Application or completing a Parental Authorization Affidavit (DLE 520-003). The form is available on the Driver Field System.

Guidelines for parent/guardian relationship and identity requirements are contained in *Section 5.6*.

2. A minor's emancipation does not change the requirements for the Intermediate License. A parent, legal guardian or employer must certify that the minor has obtained the necessary driving experience. The legislature did not exempt emancipated minors from the Intermediate Licensing law.

C. Traffic Safety Education (TSE) Course.

1. Customers applying for Washington driver license who are under 18 years of age must present one of two types of Traffic Safety Education Course (TSEC) completion certificate:
 - a. Driver Training School (DTS) certificate or
 - b. An Office of Superintendent Public Instruction (OSPI) certificate.
 - c. For a DTS or OSPI certificates
 - 1) Record the Validation Number on the application.
 - a) The DTS certificates school license number is found on the sticker and in the drop down box on the application in the DFS program.
 - b) Record the DTS certificate number found in the upper right hand corner in the comments section of the application.

- c) On the OSPI certificate, the number in the upper right hand corner may be blank. You do not need to record the certificate number from this certificate.
 - 2) The LSR will invalidate the certificate.
 - a) This may require folding the TSEC in half in order to punch through the seal, which will create two holes
 - b) Return the certificate to the customer.
- 2. If the customer has completed TSE in another state, they must present a completion certificate, or letter from that state showing completion of both the classroom and behind-the-wheel phases of a TSE course that meets or exceed Washington standards
 - a. A TSE certificate from a United State's Military Driver Education program must meet the same standard as out-of-state TSE program.
 - b. TSE courses completed in other countries are not acceptable. The exception is training can be received from a US military driver education program outside of the United States.
 - c. The out-of-state completion form (if issued before October 6, 2007) must show the customer has taken 30 hours of classroom and
 - 1) Four (4) hours of behind the wheel or
 - 2) Three (3) hours behind the wheel and four (4) hours on a simulator, or;
 - 3) Three (3) hours behind the wheel and two (2) hours on a driving range.
 - d. The out-of-state completion form (if issued after October 6, 2007) must show the customer has taken 30 hours of classroom and
 - 1) Six (6) hours of behind the wheel or
 - 2) Five (5) hours behind the wheel and four (4) hours on a simulator, or;
 - 3) Five (5) hours behind the wheel and two (2) hours on a driving range.
 - e. If the LSR is unable to verify that the minimum requirements have been satisfied, the LSR will have the customer contact the previous state's traffic safety program to obtain clarification.
 - f. A customer cannot take one-half of the TSE course in one state and one-half in another.

Example: California issues two separate certificates, one for classroom instruction and the other for behind-the-wheel training. Only by presenting both certificates together does a customer satisfy Washington's requirement.

- f. Home schooling and Internet TSE courses are not acceptable for Washington students. Customers with out of state licenses or permits can

present Internet or home school TSE course certificates if they meet the criteria in C. 2. c. above.

- h. If the customer does not have the TSEC/OSPI certificate and has completed TSE in a Washington public school:
 - 1) Refer the customer to the school for issuance of a replacement certificate.
 - 2) A student transferring from out of state must contact his or her previous school to obtain a copy of the certificate.
- i. If LSRs need clarification they will fax the document(s) presented by the customer to the Driver Training School program at (360) 570-4976 and notify the program staff by e-mail or by phone (360) 902- 0110. Inform the customer this could take 24 to 48 hours for a response.

- 3. Procedures for waiving the TSE course requirement are contained in Section 18.2 Driver Education Waiver Investigation. Minors must still meet all the other requirements for the Intermediate License.

D. Once a parent or legal guardian has signed the application of a minor, DOL has no authority to cancel the driving privilege or refuse to consider a pending application based on the parent's desire to withdraw their consent.

- 1. The Attorney General's interpretation of state law is that the permission signature signifies consent for the department to consider the application.
- 2. However, parents or guardians of minors under age 18 can be advised any future application or the replacement of a lost document will not be considered without requiring a new permission signature.
- 3. Where it can be shown an invalid permission was granted, DOL will cancel the document or refuse the application if it is still pending.

VI. Processing an original license application.

A. Verify a record of application has been completed using the procedures outlined in Section 6.4. This will include a vision test (See section 7) and medical screening (See section 8).

- 1. Verify identification (See section 5.2) and Proof of Residency meet the agency standards. (See section 6.1)
- 2. If the customer is under 18 and the parent or legal guardian is present complete the Parental Authorization Affidavit (DLE 520-003) or have them read and sign the Record of Application when it is printed.
- 3. Verify the Problem Driver Pointer System has been checked. (See section 6.6)
- 4. Verify the customer has met the knowledge, vision and medical screening standards.
 - a. Press "Screening F-3" to ensure test score has been captured. If not, press "Test Results-F21" to pull test scores from ATS or manually enter test scores, enter a score of "999" if a test is waived, and transmit.

- 1) The knowledge tests for any and all licenses/endorsements may be taken concurrently. A customer requiring a motorcycle skill test must first qualify on the drive test for a basic license.
 - 2) A customer must have been issued a PDL before a CDL can be issued.
- b. Print the record and have the customer read and sign the application in the space provided.
5. Convert the application to the issuance screen by pressing or clicking “F6” Transmit.
 - a. Ask each customer if they want to add the organ donor designation to their driver’s license. For customers that say, “Yes” the LSR will select the Organ Donor box. (See section 6.31)
 - b. Ask the customer if they wish to register to vote. If they answer “yes” click the box (See Section 6.25)
 1. Collect the fee, and complete the information in the fee window and “F10” Transmit.
 2. Give the customer any change due and the receipt.

B. Issuance of the license

1. Invalidate any previously issued Washington document, license from another state, District of Columbia, US territory, and any Canadian province by punching the document with the “W” or regular hole-punch in the upper right hand corner without obscuring the photo, expiration date ***or any vital information*** before returning it to the customer.
 - a. Commercial Driver’s Licenses (CDL) and Enhanced Driver’s Licenses and Identification cards (EDL/EID) will be retained by the LSR and will not be returned to the customer when a new document is being issued or the old document is being surrendered.
CDLs will be sent to the Mail Room, Mail Stop 48023, in a separate envelope marked “OLD CDLs”.
 - i. EDLs will be punched through the center of the photo disabling the RFID. At the end of the day, print a QB-All. Highlight the PIC numbers on the QB-Alls for each returned EDL. If an EDL is not returned (e.g. during a duplicate process), the LSR will circle the PIC number in red ink and mark “EDL not returned.” All the EDL paperwork and old EDLs will be sent to the Mail Room, Mail Stop 48023, in a separate envelope marked “EDLs”.
 - ii. **Do not put the CDL/EDL envelopes into the envelope with the daily work.** The same mailbag/blue bag, if using Campus Mail, can be used as long as the items are in different envelopes within the Campus Mail bag.

For those who do not have Campus Mail you will mail the CDL/EDL in separate envelopes, within an envelope to the Mail Center Attn: Mail Stop

48023. Another envelope will be used to mail in the daily work marked
Attn: Imaging Mail Stop 48001. You must mail in two separate envelopes.

2. *With the exception of Canada*, documents from a foreign country, will be returned without being punched or altered.
3. From the DFS Screen 173 (Neg and PIC Information) write the control (CTL) number and the expiration date in the upper right hand corner of the application in the space provided. The LSR will sign and date the application. Send customer to photo area.
4. The expiration date for original licenses is five years from the customers last birthday. If a customer's next birthday is within 30 days of issuance, an extra year will be added. This does not apply to ID cards. For example, if the birth date is May 30, and the customer applies for their license (not ID cards) on May 1, 2009 the license would expire May 30, 2014.

6.7 Driver License Renewal

- I. When a Washington driver license is due to expire, it must be renewed following certain procedures. Prior to expiration, the Department will mail a notice, which serves as a reminder to the driver. The customer does not need to present the notice at the time of license renewal.
- A. The LSR is required to screen for visual, physical, medical, and mental conditions. The requirement for conducting vision screening makes a personal appearance a necessity for renewal. This authority comes from RCW 46.20.130.
- B. *The LSR will renew an Enhanced Driver License (EDL) the same as a Personnel Driver License (PDL). There are no special requirements in renewing an EDL as long as the PIC number is not being changed. Name changes and DOB changes must be done at designed EDL offices.*
- C. Following is information regarding expiration dates. The customer will pay the full renewal fee regardless of the final expiration date. RCW 46.20.181 states that a license can be issued for no more than five years in the future, but also allows for early renewals.
1. Normally, a driver's license will be renewed up to 90 days in advance of expiration. The new expiration will be calculated from the current expiration date by adding 5 years.

Today's Date	Current Expiration	New Expiration
04-22-02	07-22-02	07-22-07

2. A driver's license may be renewed up to six months in advance of expiration if the customer indicates he/she will be out of the state at the time of expiration. The new expiration will be calculated from the current expiration date.

Today's Date	Current Expiration	New Expiration
01-22-02	07-22-02	07-22-07

3. A driver's license may be renewed up to one year in advance of expiration if the customer indicates intent to be out of the country at the time of expiration. The new expiration will be calculated from the current expiration date.

Today's Date	Current Expiration	New Expiration
07-22-02	07-22-03	07-22-08

4. When the customer does not meet these standards, suggest renewal by mail if the driver is leaving the state. If the driver continues to insist on renewing the document, it cannot be issued for more than five birthdays.

Example:

Today's Date	Current Expiration	New Expiration
04-22-2002	11-04-2002	11-04-2006

If the customer's birthday has already occurred, count the next five birthdays to determine the new expiration year. The LSR will manually type in the new expiration year.

Example:

Today's Date	Current Expiration	New Expiration
04-22-2002	02-27-2003	02-27-2007

NOTE: The same procedure applies for both licenses and identification cards. The customer will pay the full renewal fee regardless of the final expiration date.

- D. A Washington driver license that has been expired over five years is not renewable. The customer must apply for an original license.
- E. CDL endorsements are renewable up to one year from the license expiration. CDL endorsements expired over 365 days will require written and skill test. This does not include surrenders. (Refer to Section 6.27 Surrenders)
- F. Motorcycle endorsements are renewable up to five years from the license expiration without testing. This does not include surrenders. (Refer to Section 6.27 Surrenders)
- G. A license marked "Not Valid For Identification" can be renewed with the comment; however, do not add this comment during the renewal process. To remove this comment, see Section 6.2 Item IV.
- H. Renewal is accomplished by the following procedure:
 - 1. Request the customer's expiring (or expired) license. Examine the license photo and physical description to confirm that the license belongs to the individual presenting it.
 - 2. Choose the "A" Inquire/Update a license from the main menu.
 - Type in the customer's PIC number or name and date of birth.
 - Transmit "F10" or click on Transmit
 - This will automatically request photo retrieval from the IDL database.
 - When a photo is available for display, the LSR will select the "Photo F-19" or shift F-9 button to retrieve the most recent photo on file.
 - 3. The LSR will ask each customer "Do you have a social security number?" A verbal response only is required for the license renewal. If there is a correction to the number, see the Social Security Section 6.26. If the customer is applying for a driver license with an ITIN, or indicates they do not have a SSN, ask the customer to sign a Social Security Number Declaration form (DLE 520-031) stating they do not have a SSN. (Social Security Section 6.26)
 - 4. Ask the customer if he or she wishes to register to vote. If "yes" mark the "VOTER" check box and have the customer fill out a "Motor Voter" application. See Section 6.25 for required terminology.
 - 5. Ask the customer, "Would you like to participate in the Organ Donor program?" If "yes" mark the "Organ Donor" box.
 - 6. Enter the appropriate renewal code.
 - 7. Request current address information. Make changes in accordance with the Dual Address process. (Section 4 III A 7)

8. Ask the customer, "During the last six months, have you had a loss of consciousness or control which could impair your ability to operate a motor vehicle?" A "yes" answer requires further questioning to determine if the condition requires medical certification. If it does, follow the procedures outlined in Section 8, Medical.
 9. Observe the customer for any obvious physical or mental impairment that could affect safe driving. If an impairment is noted, follow the procedures outlined in Section 9, Re-Examinations.
 10. Conduct vision screening using the standards for renewal as outlined in Section 7, Vision Testing Standards. Complete the full eye exam to add or remove the corrective lens restriction or to renew a CDL license. During the full eye exam, the customer must meet the standards for acuity, phorias, horizontal field, and color.
- I. Be aware of any pending "Comment" notation that may appear on the record. Any notations must be reviewed before any further licensing can occur. Press "Shift" and "F4" or click on "Comments – F14" button to view information. Depending upon the message, you may need to contact Record Response at (360) 902-3913 for assistance.
 - J. Transmit "F10," enter payment code, amount tendered, and badge number. Transmit "F10," give any change due and the receipt to the customer. Ask the customer to proceed to the photo waiting area.
 - K. If IDL Photo is not available, and the customer does not have sufficient photographic identification or the IDL photo does not match, process the application as a duplicate. Refer to Section 6.8.

NOTE: If the LSR fails to check the "Photo Hold" box and chooses "no" in the pop-up window, a photo hold can still be put in the RTP exception/comment screen.

II. Late Renewal Penalty

There is nothing to prohibit a customer from driving on a license up to and including the date of expiration if they desire. Sometimes circumstances are such that a customer has a legitimate excuse for being unable to renew prior to expiration. LSRs are expected to use good judgment in determining what is a valid excuse. The late penalty procedure is utilized to renew a license that has been expired over 60 days, and the customer does not have a valid excuse.

- A. If the license has been expired 60 days or less, the LSR **will not** question the customer or make reference to being late.
- B. If the license has been expired more than 60 days, the LSR will determine if the customer had a valid reason for not renewing. The customer's statement will be taken as fact without question or proof required.
 1. A customer who is out of state at the time his/her license expires, or is unable to renew the license due to any incapacity may renew the license within 60 days after returning to this state or within 60 days after the termination of any incapacity, without paying the penalty fee.

2. If a customer could not renew his/her license because it expired during a period of suspension or if the customer could not renew the license due to FTAs, do not charge a late penalty fee.
3. Customers without a valid excuse will be required to pay the penalty fee. Enter a "Y," click on or hit, the space bar in the area marked "Penalty Fee" to charge the fee, along with the renewal fee.

III. Residents who are temporarily out of state may renew by corresponding with the License Support section. Out-of-State extension/renewal information is posted on the DOL Internet website (<http://www.wa.gov/dol/>).

A. A Washington driver's license may be renewed from out-of-state every other renewal, but not twice in a row.

1. Many of the requests received for renewal and duplicates are incomplete. This results in a letter of denial and a refund.
2. If the individual requesting the form can supply enough information (name/date of birth or PIC number of the driver), please take time to check the record. If the driver is ineligible (suspended, FTA, etc.), advise the individual. However, remember not to give specific information about someone else's record. Advise them the driver is ineligible and should contact Customer Service.

B. Forms for out-of-state renewals and extensions are available via the Internet. (<http://www.wa.dol/forms/>)

1. The form, with the appropriate fees, should be mailed to:

Department of Licensing
 Driver Responsibility Technical Reporting
 P.O. Box 9030
 Olympia WA 98507-9030

The extension or renewal will be mailed to the out-of-state address provided.

2. If a periodical medical or vision certificate is required, the Department will forward it to the customer.
3. A commercial driver's license without Haz Mat endorsement can be granted an extension or renewal. The following items must be included in the request for an extension for more than 30 days or the renewal of a CDL (Extensions over 30 days will require surrender of a Haz Mat endorsement):
 - a. Copy of DOT medical form with valid expiration date;
 - b. Application for intrastate Medical Waiver (if applicable);
 - c. All questions in the CDL Renewal application must be completed.
4. Fees:
 - a. License extension: \$5.00
 - b. License renewal: \$30.00 (\$25.00 licensing renewal fee plus \$5.00 processing fee)
 - c. License renewal with M/C renewal: \$55.00 (renewal fee, plus \$25.00 M/C renewal fee, plus \$5.00 processing fee)

- d. License renewal with CDL renewal: \$50.00 (renewal fee, plus \$20.00 CDL renewal fee, plus \$5.00 processing fee)
 - e. License renewal with M/C renewal and CDL renewal: \$75.00 (renewal fee, plus M/C renewal fee, plus CDL renewal fee, plus \$5.00 processing fee)
5. Incomplete submissions will result in a delay of the requested document. The applicant should enclose all required documents and fees with the completed application.